

CABLE COMMUNICATIONS

CHAPTER 24 (New 10-20-80)

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CHAPTER 24CABLE COMMUNICATIONS (New 10-20-80)ARTICLE 1. SHORT TITLE AND PURPOSES OF THE ORDINANCESec. 24-1 Short Title

This ordinance shall be known as the Vienna Cable Communications Ordinance.

Sec. 24-2 Purposes (Amend. 12-7-81)

The purposes of this ordinance are to:

- (a) Provide for the franchising and regulation of cable television systems within the Town of Vienna; and to
- (b) Provide for the payment of a fee and other valuable consideration to the Town for the construction and operation of cable television systems; and to
- (c) Provide for the regulation by the Town of the rates to be charged to subscribers for cable television service; and to
- (d) Provide for the development of cable television as a means to improve communication between and among the members of the public and public institutions of the Town; and to
- (e) Provide remedies and prescribe penalties for violation of this ordinance and the franchise granted hereunder; and to
- (f) Preserve public confidence in government by providing for disclosure of actual and potential conflicts of interests. (New 12-7-81)

ARTICLE 2. DEFINITIONSSec. 24-3 Definitions (Amend. 12-7-81, 2-7-94)

The following terms, phrases, words, abbreviations and their derivations shall have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning: when not inconsistent with the context, words used in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

APPLICATION EXPENSES means expenses paid or incurred by a person who applies for a cable television franchise. Such expenses include: (1) expenses paid for engineering or other consultant services utilized in preparing the application filed with the Town for a cable television franchise; (2) legal expenses paid or incurred for services utilized in preparing the application filed with the Town for a cable television franchise; (3) readily identifiable salaries (or portions thereof), or compensation in any form, of employees of the applicant whose services have been used to further, in any way, the application; provided that if the amount of a salary or value of compensation of an employee (which is attributable to such services) is less than one thousand dollars in the reporting period as described in section 24-5.1, then such a salary or compensation need not be included as an application expense; (4) assignment, issuance, promise of assignment or issuance to any person, or any ownership interest in the applicant, and the consideration, if any, paid or promised therefor; provided however, that such ownership interests need not include security interests which are registered pursuant to the provisions of the securities act of 1933, 15 U.S.C. § 77, and which are either traded on a recognized securities exchange or are regularly traded and the trading activity of which is reported by the National Association of Securities Dealers throughout NASDAQ, its automated communications system; provided, however, that the previous proviso shall not exclude assignments, issuances, promises of assignments or issuance of ownership interests for a consideration less than the fair market value thereof. Any person who acquires an ownership interest without payment of good and valuable consideration therefor shall be specifically identified; and (5) payments, or promises of payment, of money or any other thing of value, to any person used to further in any way the application. The disclosure required by subpart (5) of this definition shall not include those expenses disclosed pursuant to subparts (1) through (4).

BASIC CABLE SERVICE shall, at a minimum, consist of: (i) all domestic television broadcast signals carried in fulfillment of the requirements of 47 U.S.C. §§ 534 and 535 (except any signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system); (ii) any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers as basic service; and (iii) any additional video programming signals or service added to basic service by the cable operator.

BOARD shall mean the Board of Supervisors of the County of Fairfax, Virginia.

BUSINESS ASSOCIATES includes any person with whom one is jointly or mutually engaged in any profit-seeking enterprise or endeavor; and any person, corporation, partnership, syndicate, joint venture, or other entity in which one or one's immediate family is an officer, director, employee, or holder of a legal, equitable, actual or beneficial interest.

CABLE SERVICE means: (1) the one-way transmission to subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

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CABLE TELEVISION ADMINISTRATOR means that person so designated by the Town Council; and until such time as a Cable Television Administrator is designated by the Council, the Cable Television Administrator for Fairfax County shall serve as the Town of Vienna Cable Television Administrator with the authority pertaining thereto, and such authority shall terminate upon appointment of a Cable Television Administrator by the Council.

CABLE TELEVISION SYSTEM means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Town except that such definition shall not include: (1) a system which serves fewer than twenty subscribers; (2) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (3) a facility which serves only subscribers in one or more multiple unit dwellings under common ownership, control or management unless such facility or facilities use any public right-of-way; (4) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C., § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; (5) any facilities of any electric utility used solely for operating its electric systems; or (6) any portion of a system that serves fewer than fifty subscribers in the town where such portion is a part of a larger system franchised in an adjacent county, city or town.

COUNCIL shall mean the Town Council of the Town of Vienna.

COUNTY shall mean the County of Fairfax, Virginia, for the purposes of submitting and processing a franchise application for the operation of an integrated cable television system serving both the Town and County of Fairfax, Virginia, and for so long as a Grantee holds a franchise from both the Town and the County serving both jurisdictions with one integrated cable television system. If the Grantee's cable television serves or should ever come to serve only the Town of Vienna, "County" or "County of Fairfax" shall be synonymous with "Town".

FAIR MARKET VALUE means the price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it and is bought by one who is under no necessity of having it.

FEDERAL COMMUNICATIONS COMMISSION OR FCC means that federal agency as presently constituted by the Communications Act of 1934, as amended, or any successor agency.

FRANCHISE means the nonexclusive initial authorization, or renewal thereof, issued by the Town which authorizes the construction or operation of a cable television system for the term specified in section 24.7 along the public ways in the Town, or within specified areas in the Town, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the Town as may be required by other ordinances and laws of the Town.

GRANTEE means the natural person, domestic or foreign corporation, partnership, limited liability company, association, joint venture or organization of any kind granted a franchise by the council under this ordinance and its lawful successor, transferee or assignee.

GROSS REVENUES means those revenues derived from the supplying of regular subscriber service, monthly or periodic charges for service, installation fees and reconnect fees, revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, and any other revenues received by the Grantee, its employees, agents, successors, assignees, and lessees for cable television service rendered by the system within the town.

IMMEDIATE FAMILY includes the spouse and every other relative living in a person's household.

INTEREST, as that term is used in Section 24-44, includes any relationship, whether by ownership, employment, gift, fee, or otherwise; whether present, promised, or reasonably expected; whether direct or indirect; whether legal or equitable; whether actual or beneficial; from or because of which a person, his or her immediate family or his or her business associates have received financial benefit or have a right of reasonable expectation, whether or not legally enforceable, whether vested or contingent, to receive financial benefit in the future, directly or indirectly.

NET PROFIT means the amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the cable television system including the franchise fee, interest, depreciation and federal or state income taxes.

OFFICER OR EMPLOYEE includes members of the Council, the Cable Television Administrator, members of the Fairfax County Consumer Protection Commission, members of any franchise evaluation committee, all officers and directors of any consulting firm hired by the Town or County for cable television purposes and any other persons designated by ordinance.

PUBLIC WAY means the surface, the air space above the surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public right-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town which shall entitle the Town and the grantee to the use thereof for the purpose of installing and maintaining the Grantee's cable television system.

RATE REGULATED SERVICES means basic cable service, all equipment provided by a cable operator to a subscriber's home which is used to receive basic cable service, regardless of whether such equipment is used to receive other regulated or unregulated services, and the installation of all equipment which is used to receive basic cable service. Such equipment shall include, but is not limited to: (i) converter boxes; (ii) remote control units; (iii) connections for additional television receivers; and (iv) other cable home wiring.

REGULAR SUBSCRIBER SERVICE means the distribution to subscribers of signals over a cable television system on all channels except those for which a per-program or per-channel charge is made, two-way services, and those intended for reception by equipment other than a television broadcast receiver.

SERVICE TIER means a category of cable service or other services provided by a Grantee's cable television system and for which a separate rate is charged by the Grantee.

SUBSCRIBER means any member of the general public who receives or contracts with a Grantee to receive the regular subscriber service and/or any one or more of such other services as may be provided by the Grantee's cable television system, and does not further distribute such service(s).

VIDEO PROGRAMMING means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Vienna Town Code

ARTICLE 3. GRANT OF AUTHORITY

Sec. 24-4 Requirement of a Franchise

No person, firm, company, corporation or association shall construct, install, maintain or operate a cable television system within the confines of a public way in the Town, or within the confines of any other public property of the Town, unless a franchise has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.

Sec. 24-5 Franchise Applications (Amend. 12-7-81)

(a) One or more non-exclusive franchises may be granted, by ordinance, to those applicants which in the Council's judgment may best serve the public interests. No provision of this ordinance shall be deemed to be construed as to require the Council to grant a franchise.

(b) An application for a cable television franchise shall be submitted to the Council, or its designee, on a written application form or forms furnished or prescribed by the Town or its designee and in accordance with procedures and schedules to be established by the Town or its designee. Application forms may request facts and information the Town or its designee deems appropriate. Applications shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200) to the order of the "Town of Vienna", which amount shall be used by the Town to offset direct expenses incurred in the franchising and evaluation procedures including, but not limited to, Town staff time, consulting assistance, and County staff time requested by the Town.

(c) An applicant (Grantee) to whom the Council grants one or more nonexclusive franchises shall, in addition to the nonrefundable fee specified hereinabove, pay to the Town at the time the Grantee files the written instrument specified in Article 8, § 24-39, an amount not to exceed one thousand dollars (\$1,000); said payment shall be nonrefundable, shall be made to the order of the "Town of Vienna" and shall be used to offset any direct costs incurred by the Town in granting the franchise not defrayed by fees forthcoming from the provisions of subparagraph (b) of this section.

Sec. 24-5.1 Financial Expense Report (New 12-7-81)

(a) Every person submitting an application for a cable television franchise shall, simultaneously with the submission of the application, provide the Town with a complete statement of application expenses (as defined in Art. 2, Sec. (t) 1., incurred up to the thirtieth day prior to the filing of any application.

(b) Every person submitting an application for a cable television franchise shall, on or before the thirtieth day following the filing of an application for a cable television franchise provide the Town with a disclosure of application expenses incurred by the applicant for the period beginning on the thirtieth day prior to the filing of the application and ending at the close of business on the day of the filing of the application.

(c) Every person submitting an application for a cable television franchise shall, on or before the ninetieth day following the filing of an application for a franchise, provide the Town with a disclosure of such additional application expenses incurred by the applicant for the period beginning on the day following the filing of the application and ending on the sixtieth day following the filing of the application.

(d) Every person submitting an application for a cable television franchise shall provide the Town with a disclosure of application expenses incurred for each sixty-day period following the filing of the application, and such disclosure shall be submitted to the Town on or before the thirtieth day following the close of each sixty-day period.

(e) The disclosures described in the preceding sections shall be in writing. Each item of expenses shall indicate the payer, payee, amount of payment, and the date of payment. A payment of money need not be itemized if the payments to the payee do not exceed one hundred dollars (\$100) during any reporting period. Until the Town shall have rejected an application or until an applicant withdraws its application, every person submitting an application shall provide the Town with the disclosures described in this section. Failure to provide the disclosures described in this section shall be an offense.

Sec. 24-5.2 Applicant Representatives (New 12-7-81)

Any person who files an application with the Town for a cable television franchise shall forthwith, at all times, disclose to the Town, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make the disclosure described in this section shall continue until the Town shall have rejected an applicant's application, or until an applicant withdraws its application. Failure of any person to provide the written disclosures required by this section shall constitute an offense.

ARTICLE 4. CABLE TELEVISION ADMINISTRATOR

Sec. 24-6 Cable Television Administrator; Powers and Responsibilities (Amend 2-7-94)

A. Day-to-day administration of cable television operations within the Town may be assigned to a Cable Television Administrator. The Administrator's powers and responsibilities may include, but need not be limited to, the following functions:

(1) Preparing invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and evaluating applications for franchises and making selection recommendations to the Town Council.

(2) Monitoring the timely performance of Grantee(s) in making application for and obtaining all certificates, permits and agreements as provided for in this Chapter.

(3) Monitoring the performance of Grantee(s) in meeting the construction timetable as provided for in this Chapter.

(4) Advising and making recommendations to the Council, through the Town Manager, on matters which may constitute grounds for revocation of a franchise or in the imposition of other penalties in accordance with this Chapter.

(5) Monitoring and reviewing changes in, additions to, or reductions of subscriber fees and rates for conformity to the stipulations of this Chapter and advising and making recommendations to the Council, through the Town Manager, on the regulation of rates in accordance with this Chapter.

(6) Advising and making recommendations to the Town Council, through the Town Manager, on technical, engineering, and police power regulations of CATV operations within the Town.

(7) Cooperating with other systems, cable television system operators, and governmental units in the development of and in the supervision of the interconnection of systems.

(8) Reviewing all franchise records and reports as required by this Chapter as well as all franchise reports filed with the FCC and other agencies of state and local governments, and, in the administrator's discretion, require the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of this Chapter.

(9) Monitoring performance of Grantee(s) under any other terms of the franchise agreements and this Chapter and making recommendations to the Council, through the Town Manager, to ensure such compliance.

(10) Making an annual report to the Town Council, through the Town Manager, which shall include an account of franchise fees received, and a review of any plans submitted during the year by the Grantee(s) for development of new services in the Town.

(11) Conducting evaluations of the systems at least every three (3) years, and pursuant thereto, making recommendations to the Council, through the Town Manager, for amendments to this Chapter or to the franchise agreement.

(12) Receiving and investigating complaints against Grantee(s) by any person or upon direction of the Town Council.

(13) Seeking recovery, with the assistance of or through appropriate legal counsel and other officers, if necessary, of liquidated damages in accordance with this chapter.

(14) Advising Grantee(s) of the receipt of subscriber complaints affecting the Grantee's system.

(15) Taking steps necessary (1) to administer the rate regulatory provisions of the Cable Television Consumer Protection and Competition Act of 1992, PUB. L. No. 102-385, including the establishment of administrative rules and procedures which are consistent with applicable Federal Communications Commission Regulations, and (2) to exercise that authority granted to the Administrator by the Council.

B. In addition to the powers and responsibilities set forth in subsection A of this section, the Cable Television Administrator shall have authority to act on written notice from a cable television operator for any change in the price to be charged to a subscriber for inflationary and external cost adjustments as permitted by 47 C.F.R. § 76.922 and § 76.923 (hereinafter "automatic adjustment"). The Cable Television Administrator shall act on a notice of proposed automatic adjustment within thirty days of receipt of that notice or within such other time as may be allowed by the FCC. The Cable Television Administrator shall notify the Council through the Town Manager whenever notice of a proposed automatic adjustment is received, and any action taken by the Cable Television Administrator on an automatic adjustment shall be reported to the Council in the same manner. If any such notice of automatic adjustment is in strict compliance with applicable federal regulations, the Cable Television Administrator shall approve the proposed automatic adjustment. If any such notice of automatic adjustment is not in strict compliance with applicable federal regulations, the Cable Television Administrator shall approve that portion of the change that qualifies as an automatic adjustment and shall refer the balance of the proposed automatic adjustment to the Council for consideration in accordance with Section 24-20 as an application to amend the schedule of rate regulated services. (Amend. 7/97)

§ 24-6.1 ADVISORY BODIES TO THE COUNCIL (New 2-7-94)

The Consumer Protection Commission of the County of Fairfax may, as directed by the Council, advise and inform the Council on any and issues relating to cable telecommunications, including but not limited to issues related to rate regulated services.

498A

Vienna Town Code

498B

ARTICLE 5. FRANCHISE CONDITIONSSec. 24-7 Franchise Term

The term of an original franchise shall be fifteen (15) years from the date the franchise is accepted by the Grantee. The term of a renewed franchise shall be no more than fifteen (15) years.

Sec. 24-8 Notice to Grantee

The Council shall not take final action at any meeting of the Council involving the review, renewal, amendment, or revocation of a Grantee's franchise unless the Town has given the Grantee at least twenty-one (21) days written notice of such meeting. The notice shall advise the Grantee of the meeting's time, place and proposed action affecting the Grantee.

Sec. 24-9 Franchise Review

(a) It shall be the policy of the Town to amend a franchise, upon application of a Grantee, the recommendation of a Cable Television Administrator, or upon the Council's own motion, when necessary or advisable to enable the Grantee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently, or economically serve its subscribers or the Town, and/or such other reasonable purposes as the Council deems appropriate; provided, that this section shall not be construed to require the Town to make any amendment for such purposes.

Sec. 24-10 Franchise Renewal

(a) The Council may adopt a resolution setting forth the time and place of a Council meeting to be publicly announced, the purpose of which will be to review the Grantee's performance during the entire term of its franchise, to consider the adequacy of the franchise from the standpoint of the Town, the Grantee, and the Federal Communications Commission Rules of Cable Television, and to determine the advisability of renewing the Grantee's franchise.

(b) The Council may hear interested persons during said Council meeting and may determine whether the Grantee did reasonably comply with the terms and conditions imposed by this ordinance and the franchise.

(c) If the Council determines that the Grantee has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, the Council may, by ordinance, renew the Grantee's franchise, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this ordinance. The Council may require a Grantee to pay, as a condition of renewal of the franchise, an amount which the Council determines will compensate the Town for those direct expenses above normal administrative costs incurred in

connection with the renewal of the franchise.

(d) Notwithstanding the fact that the Council may determine that the Grantee has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, it shall have the right not to renew the franchise. If the Council does not renew the franchise, the Council shall have an option to the extent then permitted by existing law, to acquire the assets of the Grantee's cable television system located within the Town, or the option to permit a succeeding Grantee to acquire such assets. The amount paid for such assets shall be the fair market value of the system as of the expiration date of the franchise. The Grantee shall be entitled to no payment by reason of the value of the franchise. (Va. Code § 15.1-307) The Council's option to acquire such assets of the Grantee or to permit a succeeding Grantee to acquire such assets must be exercised within one (1) year from the date of expiration.

Sec. 24-11 Franchise Revocation Procedure

(a) Whenever a Grantee shall refuse, neglect, or otherwise fail to construct, operate or maintain its cable television system in accordance with the terms of this ordinance and the franchise or to comply with the conditions of occupancy of any public lands, or to make required extensions of service, or willfully or knowingly make false statements on or in connection with its franchise application, or in any other way violate the terms and conditions of this ordinance, the franchise, or any rule or regulation adopted thereunder, or substantially violates any provision of the Virginia Consumer Protection Act of 1977, as amended, or if a Grantee becomes insolvent, or unable to or unwilling to pay its debts, or seeks or obtains relief or is involuntarily placed under the bankruptcy laws, then, as may otherwise be permitted by law, the franchise may be revoked.

(b) In the event that the Cable Television Administrator believes that grounds for revocation exist or have existed, the Cable Television Administrator may notify the Grantee, in writing, setting forth the nature and facts of such noncompliance. If within thirty (30) days following such written notification by the Cable Television Administrator the Grantee has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued, or evidence that the alleged violations did not occur, or that the alleged violations were beyond the Grantee's control, the Cable Television Administrator shall thereupon refer the matter to the Town Council through the Mayor.

(c) The Council may revoke a franchise pursuant to paragraph (a) of this section by ordinance.

(D) The Council shall not adopt an ordinance pursuant to paragraph (c) of this section until it has given notice to the Grantee that it proposes to adopt such an ordinance and the grounds therefor. Further, the Council shall not adopt such an ordinance until the Grantee, or its representative, has had reasonable opportunity to be heard before the Council and show that the proposed grounds for revocation did not or do not exist as the case may be.

(e) A Grantee shall not be subject to the sanctions of this section for any act or omission wherein such act or omission was not willful or was beyond the Grantee's control. An act or omission shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation or other business entity which holds a substantial or a controlling interest in the Grantee, whether held directly or indirectly. Further, the inability of a Grantee to obtain financing, for whatever reason, shall not be an act or omission which is "not willful" or "beyond the Grantee's control".

(f) In the event that a franchise has been revoked by the Council, the Council shall have an option to the extent then permitted by existing law to either purchase the tangible assets of the Grantee's cable television system in the Town previously governed by the franchise or assign such rights to purchase. Such an option must be exercised within one (1) year from the date of revocation of the franchise, or the entry of the final judgment by a court reviewing the question of the Council's revocation, or the entry of a final order upon appeal of same, whichever is later.

(g) The termination of a Grantee's rights under a franchise shall in no way affect any other rights the Town may have under the franchise or under any provision of law.

Sec. 24-12 Arbitrary and Capricious Action by Grantee

If a Grantee arbitrarily or capriciously discontinues service to a substantial number of its subscribers, the Grantee's franchise may be revoked by a resolution of the Council following notice to the Grantee and an opportunity to be heard. Notwithstanding the provisions of Article 5, Section 8, of this chapter, notice to the Grantee under this section may be less than twenty-one (21) days. Provided further, the Town may seek appropriate judicial or other relief and/or the Town may proceed to exercise its rights and powers as provided for herein.

Sec. 24-13 Provision for Arbitration

In the event the Town elects to purchase a Grantee's cable television system, or any of its assets located within the Town, and the fair market value cannot be agreed upon, the final price shall be determined by a panel of arbitrators. The panel shall be composed of one arbitrator chosen by the Town, one arbitrator chosen by the Grantee, and a third arbitrator chosen by the first two. The expenses of the arbitration, including the fees of the arbitrators, shall be borne by the parties in such manner as the arbitrators provide in their award, but in no event will the Town be obligated for more than one-half the expenses. The determination of a majority of the arbitrators shall be binding on the parties. The arbitrators shall follow the rules and procedures of the American Arbitration Association except where in conflict with an express provision of this ordinance. The arbitration hearing shall take place in Vienna, Virginia, unless otherwise agreed to by the parties in writing.

Sec. 24-14 Transfer of Ownership to Town

(a) In those circumstances provided for in this ordinance where the Town shall have the right to purchase ownership of a Grantee's cable television system or any of its assets located within the Town, the Town may give notice that it elects to exercise such right and the Town may acquire such assets, at the option of the Town, at one of the following times:

- (i) At the time of giving notice of election of its right to purchase (in which case the assets shall automatically transfer to the Town);
- (ii) At any time specified by the Town subsequent to the giving of notice of its election of its right to purchase (in which case, the assets shall automatically transfer to the Town at such subsequent time); or
- (iii) At the time of payment of the fair market value thereof.

Unless the notice of election by the Town specifically exercises a right described in subparagraph (i) or (ii) above, subparagraph (iii) applies, and the question of fair market value has been submitted to arbitration, the Town may affirmatively accept the award of the arbitrators within ninety (90) days after the rendering of the arbitrators' decision within the aforesaid ninety (90) day period, the rights of the Town to purchase shall expire.

(b) In those circumstances provided for in this ordinance wherein the town shall have the right to purchase ownership of a Grantee's cable television system, or any of its assets located within the Town, no question of fair market value shall be submitted to arbitration until one hundred twenty (120) days have lapsed from the giving of such notice. Thereafter, either a Grantee or the Town may submit the matter to arbitration.

(c) If any time lapses between the time of transfer of assets and the time of payment therefor, the Grantee shall be entitled to interest during the interim at the rate of eight percent (8%) per annum.

Sec. 24-15 Town's Right to Assign

A franchise shall not limit the right of the Town to assign its rights to acquire any or all of the assets of a Grantee's cable television system located within the Town.

Sec. 24-16 Grantee's Obligation as Trustee

(a) At all times from the expiration or revocation of a franchise and until either (1) a Grantee transfers to the Town or other succeeding operator of the system all of its rights, title and interest to all assets, real and personal, related to its cable television system in the Town, or

(2) the Town's right to either acquire or assign its rights to acquire any of the Grantee's assets expires without the Town having exercised such a right, whichever occurs first, the Grantee shall have a duty to the Town and such successor and the Grantee shall not sell any of the system assets nor shall the Grantee make any physical, material, or administrative operational changes that would tend to (1) degrade the quality of service to the subscribers, (2) decrease gross revenues, or (3) materially increase expenses without the expressed permission, in writing, of the Town or its assigns. The Grantee shall at all times operate the system in accordance with terms of this ordinance and the terms of the franchise as if the franchise had not expired or had not been revoked.

(b) In the event of expiration or revocation of a franchise, this section shall not be construed to give a Grantee any vested or other franchise right, but the right of the Grantee in such circumstances shall exist only on a day-to-day basis until the transfer is effected.

(c) For its management services during this interim period as a trustee, the Grantee shall be entitled to receive as compensation the net profit, as defined herein, generated during the period between the expiration or revocation of the franchise, as the case may be, and the transfer of the Grantee's assets to the Town or a successor.

(d) Further, this section shall in no way limit the power of the Town, upon expiration or revocation of a franchise, to require the Grantee to cease all operations whatsoever and/or remove its facilities, or otherwise exercise any rights the Town would otherwise have.

Sec. 24-17 Franchise Fee (Amend. 12-7-81)

(a) A Grantee in consideration of the privilege granted under a franchise for the operation of a cable television system, shall build a cable television system in accordance with the terms of its franchise and shall pay to the Town a percentage of its annual gross revenues during the period of operation under the franchise. The percentage to be paid shall be the lesser of either the maximum amount permitted under federal or state law, or the percentage of its annual gross revenues in accordance with the following schedule and formula:

<u>Level of Penetration (%)</u>	<u>Percentage of Annual Gross Revenue (%)</u>
Less than 40	5
40 and greater & less than 55	Percentage of Annual Gross Revenue = <u>Penetration (%) - 8.3</u> 3

55 and greater

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For the purposes of determining the percentage of annual gross revenue payable to the Town, penetration shall be defined as the ratio of the number of housing units in the franchise area subscribing to cable television to the total number of housing units in the franchising area. The number of housing units subscribing to cable television service shall be provided by the Grantee and shall be the greatest number of subscribing housing units during the current calendar year.

The total number of housing units in the Town shall be provided by the Town Manager and shall be the number of housing units existing on January 1 of the calendar year immediately preceding the year in which the franchise fee payment is due. A Grantee shall, at all times, have the duty to forthwith take all steps and do all things that may be necessary and/or proper to relieve itself and the Town from any limitations which may exist under law including, but not limited to, applying for waivers of franchise fee limitations, etc.

(b) A Grantee shall file with the Town, within thirty (30) days after the expiration of each of the Grantee's fiscal quarters, a financial statement clearly showing the gross revenues received by Grantee for services within the Town during the preceding quarter. Payment of the quarterly portion of the franchise fee shall be made to the Town within the above-mentioned thirty (30) days, at or before the time such financial statement is filed. A Grantee shall also file, within one hundred twenty (120) days following the conclusion of the Grantee's fiscal year, the Grantee's financial statements for that year, examined and reported on by an independent public accountant, certified in the Commonwealth of Virginia. The cost of such audit shall be borne by the Grantee.

(c) The Town shall have the right, consistent with the provisions of Article 6, Section 21, Paragraph (b), to inspect a Grantee's income records, the right of audit and the right to recompute any amounts determined to be payable under this ordinance. Any additional amounts due the Town, as indicated by the audit, plus interest as specified in paragraph (d) of this section, shall be paid to the Town forthwith.

(d) In the event that any franchise payment is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at an annual rate of interest permitted by law. In the event that any franchise payment (or payments) totalling Five Thousand Dollars (\$5000) or more is not paid by the due date, then interest shall accrue to the Town at a rate equal to the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6221). In addition to the foregoing, the failure of the Grantee to make a timely payment (as defined by Va. Code § 6.1-330.26) of any amount shall subject the Grantee to an additional late charge of five per centum (5%) of the amount of such payment.

(e) In the event a franchise is revoked prior to its expiration date, the Grantee shall file with the Town, within thirty (30) days of the date of revocation, a financial statement clearly showing the gross revenues received by the Grantee for services within the Town since the end of the previous fiscal quarter and shall pay within that time the franchise fees accrued as of the date of revocation.

Sec. 24-18 Insurance - Bond - Indemnity

(a) At the time of filing an application for a franchise, the applicant shall obtain, pay all premiums for, and deliver to the Town written evidence of payment of premiums and originals of bid bond or bonds running to the Town with good and sufficient sureties in the amount of Fifty Thousand Dollars (\$50,000) and in a form acceptable to the Town to protect the Town from all damages or losses arising from the failure of the applicant, if selected as a Grantee, to accept the franchise in conformity with this ordinance and the substance of the proposal as submitted by the applicant.

(b) Upon the granting of a franchise, and following simultaneously with the filing of the acceptance required under § 24-39, Article 8, hereof, and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, the Grantee shall obtain, pay all premiums for, and deliver to the Town written evidence of payment of premiums for and originals of the following:

1. A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the Town, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person and Two Million Dollars (\$2,000,000) for personal injury or death of any two or more persons in any one occurrence.

2. A property damage insurance policy or policies indemnifying, defending, and saving harmless the Town, its officers, boards, commissions, agents and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) for property damage occasioned by the operation of the Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of Five Hundred Thousand Dollars (\$500,000) for property damage to the property of any one person and One Million Dollars (\$1,000,000) for property damage to the property of two or more persons in any one occurrence.

3. Copyright infringement insurance, indemnifying, defending, and saving harmless the Town, its officers, boards, commissions, agents, and employees from and against all claims of any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) for copyright infringement occasioned by the operation of the Grantee under the franchise herein granted or alleged to have been caused or occurred with a minimum liability of One Million Dollars (\$1,000,000) for the infringement of said copyrights.

4. A performance bond or bonds running to the Town with good and sufficient surety approved by the County in the sum of Two Hundred Fifty Thousand Dollars (\$250,000) conditioned upon the faithful performance and discharge of the obligations imposed by the ordinance and the franchise awarded hereunder from the date thereof including, but not limited to, faithful compliance with the construction timetable proposed by the Grantee in its application as incorporated into the franchise. Within six (6) months of the filing of the acceptance required under § 24-39, Article 8, hereof, or prior to the commencement of construction whichever time is earlier, the amount of the performance bond or bonds hereinabove shall be increased to the sum of Five Hundred Thousand Dollars (\$500,000). The amount of the bond may be reduced to Two Hundred Fifty Thousand Dollars (\$250,000) when regular subscriber service is available to more than fifty percent (50%) of the occupied dwelling units within the Primary Service Area, as described in Article 7, § 23, as certified by the Cable Television Administrator to the Council; and may be further reduced to the sum of Fifty Thousand Dollars (\$50,000) when regular subscriber service is available to more than ninety percent (90%) of the occupied dwelling units within the Primary Service Area, as certified by the Cable Television Administrator to the Council. The Town's right to recover under the bond shall be in addition to any other rights retained by the Town under this ordinance and other applicable law.

(c) All bonds and insurance policies called for herein shall be in a form satisfactory to the Town Attorney. The Town may at any time, if it deems itself insecure, require a Grantee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds with good and sufficient surety approved by the Town. No bond or insurance policy shall be cancelable. Insurance policies written for a period of less than the term of the franchise shall be renewed at least sixty (60) days before a policy's expiration and the renewed policies and evidence of premium payments shall be delivered forthwith to the Town.

(d) A Grantee shall, at its sole cost and expense, indemnify and hold harmless the Town, its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable television system under the franchise. These damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by a Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Grantee's cable television system whether or not any act or omission

complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs and attorney fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his assistants, any employees of the Town or any employee or agent of the County who performs services for the Town or for both the County and the Town, as well as such damages as may be awarded by a court of competent jurisdiction.

(e) No Grantee shall permit any policy or bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the Town a substitute, renewal or

replacement policy or bond in conformance with the provisions of this ordinance.

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Cable Communications

§ 24-19

(f) The Town may require bonds and insurance policies described in this section to run to the benefit of both the Town and other governmental units also served by the cable television system.

Sec. 24-19 Transfer of Franchise

(a) The franchise granted under this ordinance shall be a privilege to be held in personal trust by the Grantee. It shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise or by forced or involuntary sale, without prior consent of the Town expressed by ordinance and then on only such conditions as may therein be prescribed. The Town is hereby empowered to take legal or equitable action to set aside, annul, revoke, or cancel the franchise, or the transfer of the franchise, if said transfer is not made according to the procedures set forth in this ordinance.

(b) Any sale, transfer or assignment of a franchise shall be subject to the provisions of this ordinance and shall be made in writing, an executed copy of which shall be filed with the Cable Television Administrator within thirty (30) days after such sale, transfer or assignment. The Town shall not withhold its consent unreasonably; provided, however, the proposed assignee must agree to comply with all the provisions of this ordinance, the franchise, and reasonable amendments thereto, and must be able to provide proof of financial, operational, and character qualifications as determined by the Council; provided further, however, that failure of the Grantee to have constructed at least twenty-five percent (25%) of the system may be reason to refuse consent for the transfer of the franchise.

(c) No such consent shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness except when such hypothecation shall exceed seventy-five percent (75%) of the fair market value of the property used by the Grantee in the operation of its cable television system and except where the funds from the indebtedness are to be used for purposes other than the construction of the cable television system required to be provided by the franchise granted under the terms of this ordinance. Prior consent of the Council, expressed by resolution, shall be required for such transfer and said consent shall not be withheld unreasonably. This paragraph shall not apply to a transfer resulting from a foreclosure or default in the conditions of such indebtedness.

(d) Prior approval of the Council shall be required where ownership or control of fifty percent (50%) or more of the right to control of the Grantee is acquired in any transaction or series of transactions by a person, group of persons, or partnerships, firms or corporation or combinations thereof acting in concert, none of whom already own or control fifty percent (50%) or more of such right of control, singularly or collectively. By its acceptance of a franchise, a

Grantee shall specifically grant and agree that any such acquisition occurring without prior approval of the Council shall constitute a violation of the franchise by the Grantee.

(e) The consent of the Council to any sale, transfer, lease, trust, mortgage or other instrument of hypothecation shall not constitute a waiver or release of any of the rights of the Town under this ordinance and the franchise.

Vienna Town Code

ARTICLE 6. SUBSCRIBER FEES AND RECORDSSec. 24-20 Subscriber Fees (Amend. 12-7-81, 2-7-94, 7-7-97)

(a) To the extent allowed by law, the Council shall regulate subscriber rates and charges for rate regulated services. Except as otherwise provided herein, all rates and charges for rate regulated services shall be approved by the Council. In establishing such rates and charges, the Council shall comply with the Rate Regulatory Rules and Procedures adopted by the Federal Communications Commission pursuant to 47 U.S.C. § 543(b). Provided, however, proposals for automatic adjustments which are in strict compliance with 47 C.F.R. § 76.922(d) may be implemented after review and approval by the Cable Television Administrator in accordance with the procedure set forth in Section 24-6.

(b) All charges to subscribers shall be consistent with a schedule of rates and charges for all services offered by a Grantee. Except as otherwise provided by the Council, any change in the schedule of rates and charges shall not take effect until at least sixty days after approval. In addition, no change in rates or charges will be implemented unless each subscriber subject to such change in rates and charges has been notified of the change at least sixty days in advance of the change. In lieu of Grantee providing sixty days written notice to each subscriber subject to the change, such notification may be cablecast to subscribers by Grantee in a manner approved by the Cable Television Administrator, but in the event a cablecast notice is provided to subscribers, grantee also shall give each subscriber subject to the change written notice of the change no less than thirty days before the change is implemented. In addition, the Grantee shall provide oral or written notification of any pending changes to rates and charges to any person who requests cable television service or becomes a subscriber after any approval of changes to rates and charges but before the rate change becomes effective.

(c) Except as may be otherwise provided in a franchise, a Grantee shall not, with regard to rates or charges, discriminate or grant any preference or advantage to any person; provided, however, that the Grantee with the approval of the Council may establish different rates for different classes of subscribers based upon cost of service differentials, provided that the Grantee shall not discriminate between any subscribers of the same class.

(d) A Grantee shall have the right to adjust its rates or charges to recover additional costs for copyright royalty payments in accordance with the procedure set forth in Section 24-6. Such additional costs shall be limited to those costs imposed as a result of changes in royalty payments made pursuant to an action of the Royalty Tribunal (17 U.S.C. § 801, et seq.), or similar tribunal, or judicial actions affecting the validity of tribunal actions. The changes or actions described in the preceding sentence shall be limited to changes or actions which have occurred since the filing of the Grantee's application for its franchise.

(e) Grantee shall notify in writing each subscriber of all applicable fees and charges for providing cable television service prior to executing a contract of service with such subscriber or installing any equipment to serve such subscriber.

(f) A Grantee may, for promotional purposes, at its own discretion, waive, reduce or suspend connection fees or service fees for a period of up to ninety days, except as may be otherwise approved by the Cable Television Administrator. Nothing in this subsection shall prohibit a Grantee from offering free connections for a thirty-day period to any new subscriber in an area where cable service is being offered for the first time as a result of construction or extension of a cable television system.

(g) Except as may be otherwise provided in a franchise, a subscriber shall have the right to have cable television service terminated without charge. A subscriber shall not be charged for cable television service for more than two business days following the subscriber's notice of termination to the Grantee. No Grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This section shall not prevent a Grantee from refusing service to any person because the Grantee's prior accounts with that person remain due and owing.

(h) Except as may be otherwise provided in a franchise, a Grantee may offer service which requires advance payments of periodic service charges for no more than one year in advance subject to the conditions contained in this paragraph. A customer shall have the right, at any time, to have service disconnected without charge and with a refund of unused service charges paid to the customer within thirty days from the date of service disconnection. Refund shall be made on a pro-rata basis. Rate increases shall not be effective with respect to any subscriber until after the expiration of any period for which advance payment has been accepted by the Grantee.

(i) A Grantee shall, at least thirty days prior to the date it intends to terminate service to any subscriber because of the reason(s) of nonpayment of subscriber fees, notify such subscriber in writing of such intention, the reason therefor and the date such termination is to be effective.

Sec. 24-21 Books and Records

(a) A Grantee shall, (1) within thirty (30) days following the acceptance of a franchise and (2) at least yearly thereafter, and (3) within thirty (30) days of the change of ownership of three percent (3%) or more of the outstanding stock or equivalent ownership interest of a Grantee, furnish the Town a list showing the names and addresses of persons owning three percent (3%) or more of the outstanding stock or equivalent ownership interest of the Grantee. Such a list shall include a roster of the Grantee's officers and directors (or equivalent managerial personnel) and their addresses.

(b) A Grantee shall maintain books and records of its operations within the Town to show the following in sufficient detail, consistent with generally accepted accounting principles:

1. Total Revenues, by service category.
2. Operating expenses categorized by general and administrative expenses; technical expenses; programming expenses; and overhead where applicable.
3. Capital expenditures, to include capitalized interest and overhead, if any.
4. Depreciation expenses, by category.

(c) A Grantee shall retain such books and records, of any reasonable form, for a period of not less than fifteen (15) years. The Town shall have the right to extend the retention period through the term of any renewed franchise.

(d) The books and records of a Grantee's operation within the Town shall be made available in the Grantee's offices within the County during normal business hours for inspection and audit by the Town or the County or their designate within a reasonable period of time not to exceed thirty (30) days after such request has been made by the Town.

(e) Copies of Grantee's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures, and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be filed with the Town and conspicuously posted in the Grantee's local office.

Vienna Town Code

ARTICLE 7. SYSTEM OPERATIONS

Sec. 24-22 Franchise Areas

- (a) Applications for a franchise will be received by the Town pursuant to this ordinance.

Sec. 24-23 Primary Service Area

- (a) The entire Town of Vienna is denominated as the Primary Service Area.

Sec. 24-24 Interconnection and Cooperation

(a) Except as prohibited by law, the Town by resolution may require a Grantee to interconnect its cable television system with other cable television systems or other broadband communications facilities (e.g., a television communication network connecting public institutions or facilities) located within the Town. Such interconnection shall be made within ninety (90) days of a request made by the Town Council pursuant to such a resolution, or within a longer period of time as may be specified by the Council in its resolution.

(b) A Grantee shall make every reasonable effort to cooperate with cable television franchise holders in contiguous communities in order to provide cable service in areas within the Town and County.

(c) The Town shall make every reasonable effort to cooperate with the franchising authorities in contiguous communities, and with the Grantee in order to provide cable television service in areas outside the Town.

Sec. 24-25 System Description and Service

(a) The cable television system to be installed by a Grantee shall comply in all respects with the technical performance requirements set forth in the FCC's Rules for cable television including applicable amendments thereto. If the FCC should delete said requirements or otherwise fail to pre-empt this area of regulation, the Town hereby reserves the right to amend this ordinance to incorporate technical standards.

(b) Applications for a franchise may include proposals for the provision of public, education, local government, and leased access channels. Such proposals by a Grantee may be incorporated into the franchise granted and, to the extent so incorporated, shall subject the Grantee

to the following minimum requirements:

1. The Grantee shall have available equipment for local production and presentation of cablecast programs other than automated services and permit its use for the production and presentation of public access programs. The Grantee shall not enter into any contract, arrangements, or lease for use of its cablecast equipment for a substantial portion of time for public access programming.

2. The Grantee shall have no control over the content of access cablecast programs; however, this limitation shall not prevent taking appropriate steps to insure compliance with the operating rules described herein.

3. The public access channel(s) shall be made available to residents of the Town on a nondiscriminatory basis, free of charge. Charges for equipment, personnel, and production of public access programming shall be reasonable and consistent with the goal of affording users a low-cost means of television access. A Grantee shall provide without charge such production facilities and personnel to enable users of the public access channels to reasonably produce television programs not exceeding fifteen minutes duration. A Grantee shall without charge also provide the replay of users' supplied video tapes on the public access channel provided that such tapes do not exceed fifteen minutes duration. The Grantee may require that such tapes be in a standard format compatible with the Grantee's playback facilities. The Grantee shall adopt operating rules for the public access channel(s), to be filed with the Cable Television Administrator prior to the activation of the channel(s), designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter as well as a rule permitting public inspection of a complete record of the names and addresses of all persons and groups requesting access time. Such a record should be maintained for a period of two (2) years.

4. The education access channel(s) shall be made available for the use of local educational authorities free of charge. The Grantee shall adopt operating rules for the education access channel(s) designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information and obscene or indecent matter as well as a rule permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two (2) years.

5. The local government access channel(s) shall be made available for the use of local government authorities free of charge.

6. The leased access channel(s) shall be made available to leased users. Priority shall be given part-time users on at least one channel. The Grantee shall adopt operating rules for the channel(s) to be filed with the Cable Television Administrator prior to activation of the channel(s) designed to prohibit the presentation of lottery information, obscene or indecent matter

and shall establish rules to this effect; and other rules requiring nondiscriminatory access, sponsorship identification, specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of two (2) years.

(c) A Grantee shall provide without charge within the Town one service outlet activated for regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the Town; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred (300) feet solely to provide service to any such school or public building, the Town shall have the option either of paying the Grantee's direct costs for such extension in excess of three hundred (300) feet, or constructing such extension in excess of three hundred (300) feet itself, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building. Furthermore, a Grantee shall be permitted to recover, from any public building owner entitled to free service, the Grantee's actual cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred fifty (250) feet of drop cable; provided, however, that the Grantee shall not charge for the provision of regular subscriber service to the additional service outlets so installed in public schools, police stations, fire stations, public libraries, and County offices in addition to any such other facilities as are specified in the Grantee's franchise. The Grantee shall provide full operational capability to the service outlets in the Town in accordance with the construction schedule mandated by Article 7, § 24-30, or in accordance with the construction schedule submitted with the Grantee's proposal, whichever is earlier.

(d) The system shall be designed so that no more than two percent (2%) of the occupied dwelling units within the Town shall be more than nine (9) air miles from a headend or distribution hub.

(e) A Grantee shall not refuse cable television service to any person or organization who requests such service for lawful purposes.

(f) A Grantee shall not permit the transmission of any programming under its control that is obscene or indecent. At the option of the subscriber, the Grantee shall provide at cost a device capable of blocking out or otherwise disabling a television set from receiving those channels upon which the Grantee imposes a charge based upon a per-program basis or a per-channel basis. This device shall be designed to permit a subscriber, by the use of a key or similar locking system, to prevent others who do not have a key from viewing or receiving the programs on the aforementioned channels.

Sec. 24-26 Operational Requirements and Records

(a) A Grantee shall construct, operate, and maintain the cable television system subject to full compliance with the rules and regulations including applicable amendments, of the Federal Communications Commission and all other applicable Federal, State, County, or Town laws and regulations. The cable television system and all its parts shall be subject to inspection by the Town and the Town reserves the right to review a Grantee's construction plans prior to commencement of construction.

(b) A Grantee shall maintain an office within the County which shall be open and accessible to the public with adequate telephone service during normal business hours. A Grantee shall employ an operator or maintain a telephone answering device twenty-four (24) hours per day, each day of the year, to receive subscriber complaints.

(c) A Grantee shall exercise its best effort to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality (within the limitations imposed by the technical state-of-the art).

(d) Copies of all correspondence, petitions, reports, applications and other documents sent or received by a Grantee from Federal or State agencies having appropriate jurisdiction in matters affecting cable television operation shall be promptly furnished by the Grantee to the Town.

(e) In the case of any emergency or disaster, a Grantee shall, upon request of the Town, make available its facilities to the Town or its agents or agencies for emergency use during the disaster period. "Emergency" or "disaster" shall be limited to mean a "natural disaster", "man made disaster", "major disaster", "state of emergency", and/or "local emergency" as defined in Va. Code § 44-146.16. (Repl. Vol. 1976)

Sec. 24-27 Tests and Performance Monitoring

(a) Not later than ninety (90) days after any new or substantially rebuilt portion of the system is made available for service to subscribers, technical performance tests shall be conducted by Grantee(s) to demonstrate full compliance with all technical standards including the Technical Standards of the Federal Communications Commission and Paragraph (c), § 24-26 of this Article.

Such tests shall be performed by or under the supervision of a registered professional engineer or an engineer with proper training and experience. A report of such tests shall be submitted to the Town describing test results, instrumentation, calibration, and test procedures, and the qualifications of the engineer responsible for the tests.

(b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities, and at locations to be specified in the franchise. Such periodic tests shall be made at the test points as shall be described by the Cable Television Administrator.

(c) At any time after commencement of service to subscribers, the Town may require additional reasonable tests, including full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal, at the Grantee's expense to the extent such test may be performed by the Grantee's employees utilizing its existing facilities and equipment; provided, however, that the Town reserves the right to conduct its own tests upon reasonable notice to the Grantee; and if noncompliance is found, the expense thereof shall be borne by the Grantee. The Town will endeavor to arrange its request for such special tests so as to minimize hardship or inconvenience to a Grantee or to subscribers.

(d) The Town shall have the same rights as the Federal Communications Commission has to inspect a Grantee's performance test data.

(e) The Town shall have the right to employ qualified consultants if necessary or desirable to assist in the administration of this or any other section of this ordinance.

Sec. 24-28 Service, Adjustment and Complaint Procedure

(a) A Grantee shall establish a maintenance service capable of promptly locating and correcting system malfunctions. Said maintenance service shall respond at all hours to correct system malfunctions affecting one (1) or more percent of a Grantee's total number of subscribers.

(b) A Grantee shall maintain a listed local telephone number which shall be available to subscribers for service calls twenty-four (24) hours per day. Corrective action shall be initiated by a Grantee not later than the next business day after a service call is received, and corrective action shall be completed as promptly as practicable. Appropriate records shall be

made of service calls showing when and what corrective action was completed. Such records shall be available to the Town during normal business hours and retained in Grantee's files for not less than three (3) years. Microfilm copies of such records shall satisfy the requirements of this section. A summary of such calls shall be prepared by the Grantee and submitted to the Cable Television Administrator annually in a form acceptable to the Cable Television Administrator beginning twelve (12) months after service is provided to the first subscriber.

(c) A Grantee shall provide each subscriber, at the time service is first provided to the subscriber, written information which shall include:

1. Name, address, mailing address, and telephone number of the Grantee's representative or representatives to whom the subscriber may submit consumer or service complaints.
2. Business address, mailing address, and telephone number of the Cable Television Administrator to whom the subscriber may submit consumer or service complaints.

(d) The Cable Television Administrator shall keep records of subscriber complaints for such lengths of time as may be required by the Council.

(e) A Grantee may interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after giving notice, reasonably calculated to reach subscribers, of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance, and repair without notification except on Saturday, Sunday or a holiday.

Sec. 24-29 Street Occupancy

(a) A Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property until approval of the property owner or appropriate governmental authority is obtained. Approval of the Town shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of a Grantee shall be a vested interest; and such poles, structures, or facilities shall be removed, replaced or modified by a Grantee at its own expense whenever the Council or other governmental authority determines that the public convenience would be enhanced thereby.

(b) Where the Town, other unit of government, or a public utility serving the Town desires to make use of the poles or other wire-holding structures of a Grantee, but agreement therefor with the Grantee cannot be reached, the Council may require the Grantee to permit such use for such consideration and upon such terms as the Council shall determine to be just and reasonable if the Council determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

(c) Unless otherwise regulated, all transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of owners of property which adjoins or abuts a street, way, or other property upon which a Grantee has placed its facilities and at all times such facilities shall be kept and maintained in a safe, adequate, and substantial condition, and in good order and repair. A Grantee shall at all times employ at least reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by a Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(d) In those areas of the Town where electric and telephone utility lines have been placed underground, a Grantee shall place its lines and installations underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground provided that at such time as both of those facilities are placed underground, the Grantee shall forthwith place its facilities underground, and the cost of same shall be paid by the Grantee and no special charge shall be imposed upon any subscriber for such placing of facilities underground.

(e) In the event of disturbance of any road or private property by a Grantee, it shall at its own expense and in a manner approved by the Town, other appropriate governmental authority, or the owner, as the case may be, replace and restore such road or private property in as good a condition as before the work causing such disturbance was done. In the event the Grantee fails to perform such replacement or restoration within a reasonable time, the Town, other governmental authority, or the owner shall have the right to do so at the sole expense of the Grantee. Payment to the Town, governmental authority, or owner for such replacement or restoration shall be upon demand.

(f) At the request of any person holding a valid building moving permit issued by the Town or any other government authority, if such a permit is required, and upon at least forty-eight (48) hours notice, Grantee shall temporarily raise, lower, or cut its wires as may be necessary to facilitate such move. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and Grantee shall have the authority to require payment in advance.

(g) A Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision and/or direction of the Town or other local government authority.

Sec. 24-30 Construction Schedule and Reports

(a) Upon accepting the franchise, a Grantee shall, within sixty (60) days, apply or otherwise file the documents required to obtain all necessary Federal, State and local licenses, permits and authorizations required for the conduct of its business, and the construction and installation of its facilities; and it shall submit monthly reports to the Cable Television Administrator on progress in this respect until all such licenses, permits and authorizations are secured.

(b) A Grantee shall commence construction of the cable system one (1) year after acceptance of a franchise. It shall complete construction of the system and shall offer and be capable of delivering cable television service to all occupied dwelling units in the Town and all public service outlets in the franchise area as described in Article 7, § 24-25(c) in accordance with the following schedule:

<u>No later than:</u>	<u>Minimum percentage of occupied dwelling units in PSA and minimum percentage of public service outlets in the franchise area.</u>
12 months after commencing construction	20%
24 months after commencing construction	40%
36 months after commencing construction	60%
48 months after commencing construction	80%
60 months after commencing construction	100%

For the purposes of this section, construction shall be deemed to have commenced when the first aerial strands of cable have been attached to a pole, or the first underground trench has been opened. The failure of a Grantee to secure the necessary Federal, State and local licenses, permits and authorizations required for the conduct of its business shall, in no way, relieve the Grantee from the obligations of this section and the failure to observe the construction schedule above shall, in addition to the other rights of the Town, be grounds for the Town to terminate or revoke

the franchise.

(c) Franchise applications shall include a timetable showing the percentage of occupied dwelling units within the Town that will be capable of receiving cable television service at the end of each year following the beginning of construction. Said timetable shall be incorporated into the franchise and shall be enforceable as to the Grantee under the provisions of this ordinance.

(d) Within three (3) months after accepting the franchise, a Grantee shall furnish the Town a construction schedule and map setting forth target dates consistent with Paragraphs (b) and (c) of this section for commencements of service to subscribers and the areas to be served. The schedule and map shall be updated whenever substantial changes become necessary.

(e) Every three (3) months after the start of construction, a Grantee shall furnish the Town a report on progress of construction until complete. The report shall include a map that clearly defines the area wherein regular subscriber service is available.

Sec. 24-31 Protection of Privacy (Amend. 12-7-81)

(a) A Grantee shall not permit the transmission of nor shall a Grantee receive any signal, aural, visual, or digital, including polling channel selection, from any subscriber's premises without first obtaining written permission of the subscriber. This provision is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

(b) A Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.

(c) A Grantee shall notify in writing each subscriber what personal information the Grantee shall receive or collect from each subscriber, and what use will be made of this information. The notice shall be given prior to the commencement of providing service to a subscriber, and at least once a year thereafter. "Personal Information" shall mean any item, collection, or grouping of information about an individual or subscriber that is received, collected or maintained by the Grantee including, but not limited to, the individual's or subscriber's education, Social Security number, financial transactions, medical history, property, uses of cable television service or cable communications, and the information described in subsection (a) of this section. (New 12-7-81)

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ARTICLE 8. GENERAL PROVISIONS

Sec. 24-32 Limits on Grantee's Recourse

(a) Except as expressly provided in this ordinance and the franchise, a Grantee shall have no recourse against the Town for any loss, expense or damage resulting from the terms and conditions of this ordinance or the franchise or because of the Town's enforcement thereof, nor the Town's failure to have the authority to grant the franchise. A Grantee shall expressly agree that upon its acceptance of the franchise, it does so relying upon its own investigation and understanding of the power and authority of the Town to grant said franchise.

(b) A Grantee, by accepting the franchise, shall acknowledge that it has not been induced to accept same by any promise, oral or written, by or on behalf of the Town or by any third person regarding any term or condition of this ordinance or the franchise not expressed therein. A Grantee shall further pledge that no promise or inducement, oral or written, has been made to any Town employee or official regarding receipt of the cable television franchise; and that it will not hire any individual employed full time by (1) the Town or (2) a consultant employed by the Town to assist the Town in the administration of this ordinance. Such proscription of employment shall extend for one (1) year following the granting of the franchise unless the Council consents to such employment at an earlier date.

(c) A Grantee shall further acknowledge by acceptance of a franchise that it has carefully read the terms and conditions of this ordinance and the franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

(d) Any decision or decisions of the Council concerning the selection of one or more Grantees and the awarding of one or more franchise is final.

(e) The Town shall have the authority to exercise any of its governmental, contractual and franchise powers and the performance of duties whether as a separate governmental unit or jointly with any other governmental unit served by the cable television system established by the Grantee; and by the acceptance of the franchise, the Grantee acknowledges his concurrence with the exercise of such powers and the performance of such duties in that manner. Upon entering into an agreement with another governmental unit for the joint exercise of governmental powers, either jurisdiction may proceed jointly or severally as they may agree; or either jurisdiction, with consent of the other, may proceed to assert the rights on behalf of the other; and the violation of a franchise provision or ordinance in another jurisdiction which pertains to the cable television system serving the Town may, at the election of the Town, be regarded as a violation of the franchise granted by the Town.

Sec. 24-33 Special License

The Town reserves the right to issue a license, easement, or other permit to anyone other than a Grantee to permit that person to traverse any portion of a Grantee's franchise area within the Town in order to provide service outside the Town. Such license or easement, absent a grant or a franchise in accordance with this ordinance, shall not authorize nor permit said person to provide a cable television service of any nature to any home or place of business within the Town, nor to render any service or connect any subscriber within the Town to the Grantee's cable television system.

Sec. 24-34 Franchise Validity

A Grantee shall agree, by the acceptance of a franchise, to accept the validity of the terms and conditions of this ordinance and the franchise in their entirety, and that it will not at any time proceed against the Town in any claim or proceeding challenging any term or provision of this ordinance or the franchise as unreasonable, arbitrary or void, or that the Town did not have the authority to impose such term or condition.

Sec. 24-35 Failure to Enforce Franchise

A Grantee shall not be excused from complying with any of the terms and conditions of this ordinance, or the franchise, by any failure of the Town upon any one or more occasions to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

Sec. 24-36 Rights Reserved to the Town (Amend. 12-7-81)

The Town hereby expressly reserves the following rights:

1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the Town.
2. To adopt, in addition to the provisions contained herein and in the franchise and in any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power, municipal powers and functions.
3. To amend this ordinance. (New 12-7-81)

Sec. 24-37 Employment Requirement

A Grantee shall not refuse to hire, nor discharge from employment nor discriminate against any person regarding compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed or national origin. A Grantee shall take affirmative action to insure that employees are treated during employments without regard to their age, sex, race, color, creed or national origin. This condition includes, but is not limited to, the following: recruitment advertising, employment interviews, employment, rates of pay, upgrading, transfer, demotion, lay-off, and termination.

Sec. 24-38 Time Essence of Agreement

Whenever this ordinance or the franchise sets forth any time for any act to be performed by or on behalf of a Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the Town to invoke the remedies available under the terms and conditions of this ordinance and the franchise.

Sec. 24-39 Acceptance

(a) A franchise and its terms and conditions shall be accepted by a Grantee by written instrument filed with the Town Manager within thirty (30) days after the granting of the franchise.

In its acceptance, the Grantee shall declare that it has carefully read the terms and conditions of this ordinance and the franchise and accepts all of the terms and conditions imposed by this ordinance and the franchise and agrees to abide by same.

(b) Acceptance of a franchise by a Grantee shall operate as a waiver by the Grantee of any claim to operate a cable television system within the Town as against the regulatory power of the Town because of the previous operation of the same, whether by franchise or otherwise.

Sec. 24-40 Liquidated Damages

Notwithstanding any other remedy provided for in this ordinance, or otherwise available under law, the Town shall have the power to recover monetary amounts from a Grantee under certain conditions, such monetary amounts being in the nature of liquidated damages. The conditions for and amounts of such damages are listed below. By accepting a franchise, a Grantee automatically agrees that the following conditions will cause damages to the Town, and that the monetary amounts are established because it is difficult to ascertain the exact amount of the damages. The damages resulting to the Town include, but are not limited to: (1) loss of franchise fees that would have otherwise been paid to or would have become due the Town, and (2)

administrative costs incurred by the Town.

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1. For failure to submit plans indicating expected dates of installation of various parts of the system -- One Hundred Dollars (\$100) per day.

2. For failure to commence operations in accordance with this ordinance and/or the franchise -- Two Hundred Dollars (\$200) per day.

3. For failure to complete construction and installation of the system within the required time limits -- Three Hundred Dollars (\$300) per day.

4. For failure to supply data requested by the Town in accordance with the requirements of the franchise and this ordinance, such data pertaining to installation, construction, customers, finances or financial reports, or rate review -- Fifty Dollars (\$50) per day.

5. For failure to otherwise provide service to a subscriber in accordance with the requirements of this ordinance -- Ten Dollars (\$10) per day per subscriber affected, but not to exceed Fifty Dollars (\$50) per subscriber per month, and further, not to exceed One Thousand Dollars (\$1,000) per day in aggregate. This amount shall be reduced by any refunds of subscriber fees made to subscribers affected by the failure, etc., to provide service.

Sec. 24-41 Unlawful Acts

It shall be unlawful for any person to attach or affix or to cause to be attached or affixed any equipment or devices which allows access or use of the cable television service without payment to the Grantee for same.

Sec. 24-42 Penalties (Amend. 12-7-81)

(a) The following acts shall be deemed Class I misdemeanors under this ordinance. Each day of a continuing offense is a separate offense:

1. Willful failure, refusal or neglect by a Grantee to construct, operate, or maintain its cable television system in accordance with the terms of this ordinance or the franchise granted pursuant to this ordinance.
2. Transmission or reception by a Grantee of a signal from a subscriber's premises in violation of Article 7, § 24-31.
3. The attaching or affixing or causing to be attached or affixed any equipment or device as described in § 24-31 of this Article. The attaching of or affixing of each unit of such equipment or device shall constitute a separate offense.

4. Noncompliance with the provisions of § 24-44 and § 24-45. (Amend. 12-7-81)

(b) The violation of any other provision of this ordinance shall be subject to such other penalties as shall be prescribed by law or ordinance. Each day of a continuing offense is a separate offense.

Sec. 24-43 Severability

If any section of this ordinance or the franchise, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions hereof except as otherwise provided for herein.

Sec. 24-44 Financial Disclosure by Applicants (New 12-7-81)

(a) Every request for proposal shall require, and every cable franchise application shall contain, a complete and detailed listing, under oath, of the following information:

1. The names and positions with the Town of Vienna or Fairfax County of all Town or County officers and employees known to the applicant to have any interest in the entity making application, and the extent of such interest.
2. The names and last-known addresses of all persons who have acted as attorney, broker, consultant, or agent of the applying entity with respect to the application.
3. The names and last-known addresses of all persons who own or control any interest in the applying entity; in the case of a partnership or joint venture or syndicate, the names and last-known addresses of all partners or participants; in the case of a corporation having fewer than two hundred (200) stockholders, the names and last-known addresses of all stockholders; and in the case of a corporation having more than two hundred (200) stockholders, the names and last-known addresses of two hundred (200) stockholders who own or control the greatest percentage of voting ownership interest in the applying entity; except that corporations having more than two thousand (2000) stockholders and whose stock is traded on a national stock exchange shall disclose only those stockholders owning a stock interest of one percent (1%) or more; provided, however, that if any person so identified is other than an individual, the name and last-known addresses of all persons who own or control any interest in such person shall be stated; provided further, that if any statement of ownership discloses an interest held by a person other than an individual, a similar disclosure statement shall be

provided. For the purpose of this paragraph, a person holding any ownership interest as a trustee shall not be deemed to be an individual, and all persons who may have any interest under the trust, whether vested or contingent, shall be included in the required statements.

4. The names and last-known addresses of all holders of debt of the applying entity, other than stockholders or suppliers of goods and services paid on current account, in excess of Five Thousand Dollars (\$5,000) or one percent (1%) of the total outstanding indebtedness of the entity, whichever is the lesser.
5. The name and position of each Town or County officer or employee to whom, or to whose immediate family, the applying entity or any person described in paragraph 3 hereof has made any gift or donation of One Hundred Dollars (\$100) or more within three (3) years preceding the filing of the application, the name of the donor, and the amount or value of the gift or donation. As to elected Town or County officials, this requirement includes disclosure of donations to their "principal campaign committees" and "authorized committees" as defined by 2 USC Section 431, and campaign committees formed pursuant to Virginia Code Section 24.1-251, et seq.

(b) The Town Council in its discretion shall eliminate from consideration any applicant for the award of a cable television franchise within the Town who is not in compliance with the provisions of the disclosure requirements of this ordinance.

Sec. 24-45 Financial Disclosure by Officers and Employees (New 12-7-81)

(a) Within thirty (30) days after receipt of notification that application for a franchise has been received by the Town, and again within thirty (30) days after notification of the adoption of an ordinance granting a cable television franchise, each Town officer and employee shall file with the Town Clerk a complete and detailed statement, under oath, to the best of their information, knowledge and belief after a duly diligent search, containing the following information:

1. The name of each entity which has applied for a franchise in which the Town officer or employee, a member of his or her immediate family or any of his or her business associates, has any interest; the amount, nature, and extent of the interest; and the name of the person possessing such interest.

2. The name of any partner, participant, stockholder, officer, or employee, or any member of the immediate family of any of them, of any applying entity who has made any gift or donation of One Hundred Dollars (\$100) or more to the officer or employee or to a member of his immediate family within three (3) years prior to the filing of the entity's franchise application, and the name of the recipient and amount or value of the gift or donation.

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